

FILED

JUL 31 2019

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

HYPOWER, INC.
(Hypower@pacbell.net)
2229 Harbor Bay Parkway
Alameda, CA 94502
510-769-0800

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
450 Golden Gate Avenue
Mail Box 36099
San Francisco, CA 94102
Bankruptcy Case
No. 19-30088 (DM)

WEIL, GOTSHAL & MANGES LLP
Stephen Karotkin
Ray C. Schrock, P.C.
Jessica Liou
Matthew Goren
767 Fifth Avenue
New York, NY 10153-0119

KELLER & BENVENUTTI LLP
Tobias S. Keller
Jane Kim
650 California Street, Suite 1900
San Francisco, CA 94108

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
Bankruptcy Case
No. 19-30088 (DM)

PG&E CORPORATION,
- and -
PACIFIC GAS AND ELECTRIC
COMPANY,
Bankruptcy Case
No. 19-30088 (DM)
Chapter 11
(Lead Case) (Jointly Administered)

**RE: DEBTORS' FIRST OMNIBUS REPORT AND
OBJECTION TO CLAIMS ASSERTED
PURSUANT TO 11 U.S.C. § 503(b)(9)**

**Claim 1386 Hypower, Inc.
PARTIAL ACCEPTANCE AND PARTIAL OBJECTION TO CLAIM
CLASSIFICATION**

In accordance with the provisions of the subject proceeding, Hypower, Inc submitted a claim, subsequently numbered 1386, for power sold to PG&E under a Power Purchase Agreement (PPA) dated October 1984, as amended.

The claim amount of \$72,092.92 has been accepted in the First Omnibus Report and Objection to Claims Asserted as above. The total of \$72,092.92 consist of payment for delivery of power to PG&E during the period before the bankruptcy filing of 28 January 2019. This amount is not in dispute.

PG&E's invoice pays for power purchased in two parts under the PPA. The portion of the invoice for delivered energy is \$65,278.78. This amount has been classified as "Proposed Allowed under 503(b)(9)". This amount and classification is not in dispute. Hypower, Inc concurs that the delivery under the PPA is a good and not a service.

The remainder of the invoice, \$6,784.14, is proposed by debtor to be reclassified as "General Unsecured". This amount of the PG&E invoice is for as-delivered capacity under the PPA. Hypower, Inc. disputes this reclassification and asserts that this portion of the payment for power also constitutes a good and not a service. The two-part payment for power delivered is not separable but constitutes recognition of the good exchanged in two manners.

The PPA defines terms and payment for purchased power. It is for the value agreed at the time of contract for a good, not a service. While the value of the power sold to PG&E is compensated in two ways, as energy and as-delivered capacity, the division was made to allow the energy rate to change during the contract term, while the as-delivered capacity rates were set at the time of contracting. Moreover, the good provided – electrical power – cannot be termed as a service, no matter how the compensation for the power is structured under the contract.

There are compelling reasons to reject the reclassification for "as-delivered capacity" as a service:

- 1) Energy is simply capacity over time. Capacity is measured in kilowatts at any instant in time; Energy is measured in kilowatt-hours or capacity over time.
- 2) The power provided to PG&E, or energy and capacity are delivered simultaneously over the same transmission lines.
- 3) The power goods delivered to PG&E under the PPA are metered by the same equipment.
- 4) The two items are not separable. It is not physically possible to separate the energy and as-delivered capacity.

- 5) The as-delivered capacity payment is based on the time of day of delivery of the energy portion of the power purchase.
- 6) No actions whatsoever were taken by Hypower, Inc. to deliver the as-delivered capacity aside from the concurrent delivery of energy.

Any justification for terming part of the payment for power purchased by PG&E over the period covered by this invoice clearly ignores these physical realities.

Hypower, Inc respectfully requests the re-classification of the as-capacity portion of their payment for power delivered to PG&E during the subject period, \$6,794.14, be correctly placed in the category with the remainder of their power delivery payment as "Proposed Allowed under 503(b)(9).

DELIVERED JULY 31, 2019

FOR HYPOWER, INC.



Jenny So, Secretary